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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,237	03/15/2001	Karapet Ablabutyan	23451-037	8258

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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 01/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/811,237

Applicant(s)

ABLABUTYAN ET AL.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-51 is/are pending in the application.
- 4a) Of the above claim(s) 36-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21-35 and 46-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 21.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Claims 36-45 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant traversed the restriction requirement in Paper No. 20 on the basis that since these claims recite a cantilever liftgate, which is defined in the specification as a liftgate having a platform supported at one end only, these claims are improperly restricted. However, the mere fact that a cantilevered liftgate is recited does not mean that a liftgate having a platform supported at one end only is inherently part of the claim. It has previously been established that language pertaining to this feature of applicant's invention was necessarily added to define over the Dunlop et al reference (see paper nos. 13 and 16). Claims drawn to subject matter not including this feature are therefore patentably distinct and properly restrictable.

It is noted that amended claims 27-34, previously withdrawn, are no longer restrictable and will be examined. However, any rejection of these claims can properly be made final, since it is applicant's amendment of these claims, not an improper restriction, which places these claims in condition for examination on the merits.

2. Applicant's IDS filed 10/31/03 has been considered, including the previously not-considered German Patent No. 3739267. Two U.S. Patents have been crossed-out, as they have nothing in common with the subject matter of the present application, and are believed to have been cited in error. The international search reports have also been crossed-out, as they are part of the corresponding WO publications and are not by themselves considered to be documents.

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3. The drawings (sheets 2 and 6) were received on 10/31/03. These drawings are approved.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of "the vehicle body" lacks antecedent basis.

6. Claims 1-14, 21-35, and 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunlop et al in view of Mortenson.

Dunlop et al show a liftgate comprising a unitary frame having opposing side plates 3A, 3B and extension plate 5 extending therebetween, hydraulically driven lift frame 81 pivotally attached to the side plates, and liftgate platform 87 rotatably attached to the lift frame, wherein the liftgate is secured to the vehicle body by brackets 7A, 7B in a fully assembled state which is inherently considered to be capable of "freestanding".

Dunlop et al do not show the platform to be supported at one end only, although the liftgate as a whole is cantilevered from the vehicle body.

Mortenson shows a liftgate for securement to a vehicle including side plates 14, trunnion tube 16, extension plate 46 which can be welded to the vehicle body, lift frame

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having linkages 20 with upper and lower arms and lift frame tube 44, liftgate platform 28 supported at one end only and including a stop 48 which prevents movement of the platform past a horizontal orientation parallel to the vehicle body, and hydraulic cylinder 42 which raises the liftgate platform while maintaining it in a horizontal orientation, and which inverts the platform into a storage position when it is rotated to a vertical position.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Dunlop et al by supporting the liftgate platform at one end only, as shown by Mortenson, as this would provide greater control of the liftgate platform, especially when used on a larger truck such as that of Mortenson. Note that Dunlop et al disclose that the apparatus may be scaled up for use on larger trucks.

Re claim 2, to have attached the liftgate to the underside rather the end of the truck body would have been an obvious design expediency, especially when used on a larger truck as discussed above.

Re claims 20-26 and 46-51, the modified apparatus of Dunlop et al could obviously be used to perform the method steps set forth.

7. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortenson in view of Dunlop et al.

Mortenson does not show the side plates to be secured to the vehicle body, and utilizes two rather than one hydraulic cylinders.

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Dunlop et al show the side plates secured to the vehicle body, and discloses in the "background" section that either one or two hydraulic cylinders are art recognized alternate equivalents.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Mortenson by attaching the side plates to the body rather than the frame of the vehicle, and utilizing one rather than two cylinders, as Dunlop et al suggest both modifications as alternate equivalent design choices. Again, attaching the liftgate to the underside rather the end of the truck body would have been an obvious design expediency, especially since Mortenson already shows the lift gate assembly attached underneath the vehicle.

8. Applicant's arguments filed 10/31/03 have been fully considered but they are not persuasive.

Applicant again argues that neither reference shows a cantilevered liftgate. It is not understood what significance applicant is attaching to the word "cantilever" which allegedly defines over the references, but there is simply no language in the claims which supports such a conclusion. Both references clearly show liftgate assemblies cantilevered from a vehicle; it is simply not understood how any contrary conclusion could be reached. Admittedly, the base reference Dunlop et al does not show the platform *per se* to be cantilevered, but this is why the secondary reference Mortenson is used. Mortenson, contrary to applicant's assertion, certainly does show a platform supported at one end only. That is the definition of a cantilever. Applicant's lengthy

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discussion of Mortenson's four bar linkage including tension assemblies and compression links is not germane to whether or not the platform is cantilevered. Applicant's argument concerning element 48 of Mortenson is similarly not understood. Applicant admits that element 48 prevents upward movement of the platform past the bed of the vehicle. It therefore is clearly a "stop" or "motion limit member".

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

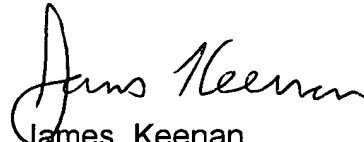
A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559. The examiner can normally be reached on Monday through Thursday, although this may vary.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


James Keenan
Primary Examiner
Art Unit 3652

jwk
1/6/04